

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

KELVIN E. BROWN,

Plaintiff,

v.

Civil Action No. 7:09cv00180

TRACY S. RAY, Warden, et al.,

Defendants.

AMENDED ANSWER

COME NOW the Defendants, by counsel, and answer the Amended Complaint as follows:

FIRST DEFENSE

The Defendants deny that the present action is cognizable under 42 U.S.C. § 1983 and 28 U.S.C. § 1343, the Religious Land Use and Institutionalized Persons Act.

SECOND DEFENSE

The Defendants deny that the Plaintiff has been denied any rights protected by the United States Constitution or any portion of the United States Code.

THIRD DEFENSE

This Complaint fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

The Defendants deny that the Plaintiff has suffered any cognizable injuries or damages as a result of any act or acts on the part of these Defendants and demand strict proof thereof.

FIFTH DEFENSE

The Defendants allege and aver that, to the extent that the Plaintiff has suffered any injuries or damages, such injuries or damages were due to an act or acts by the Plaintiff, or on the part of others not under the control of the Defendants, and for whose conduct they are in no way responsible.

SIXTH DEFENSE

The Defendants deny that the Plaintiff has suffered the injuries and damages alleged and call for strict proof thereof.

SEVENTH DEFENSE

The Defendants deny that they are indebted to or liable to the Plaintiff in any sum whatsoever.

EIGHTH DEFENSE

The Defendants are immune from suit on this claim based upon the 11th Amendment and the discharge of their official duties.

NINTH DEFENSE

The defendants are entitled to good faith or qualified immunity.

TENTH DEFENSE

To the extent that the plaintiff has failed to allege any direct involvement on the part of any of the defendants in any of the acts or omissions complained of, such claims must fail since respondeat superior is not available in an action under 42 U.S.C § 1983.

ELEVENTH DEFENSE

Plaintiff has failed to exhaust some or all of his claims through the prison grievance system and such claims are therefore barred.

TWELFTH DEFENSE

1. Defendants admit the allegations set forth in ¶¶ 2-12, 14, 15, 17-22 and 24.
2. Defendants admit the allegations set forth in ¶ 13 but deny that the Final Call is an essential text to members of the Nation of Islam.
3. Defendants admit the allegations set forth in ¶ 16 but affirmatively state that there are videos devoted to the Nation of Islam available to the prisoners incarcerated at Red Onion State Prison and such prisoners also have access to the chaplain's services.
4. The statements set forth in ¶¶ 1, 23, 25, 27, 28, 30-34, 36, 37, 39, 40, and 42-46 are legal assertions or conclusions that are neither admitted nor denied.
5. The statements set forth in ¶¶ 26, 29, 35, 38 and 41 do not call for any additional response.

THIRTEENTH DEFENSE

The Defendants will rely on any and all other properly available defenses to the Complaint which may arise from the Plaintiff's prosecution of this action and reserve their right to amend their answer if at any time they should be so advised.

Respectfully submitted,

TRACY S. RAY, Warden, et al.

By: s/ Richard C. Vorhis
Richard C. Vorhis, VSB #23170
Senior Assistant Attorney General
Public Safety and Enforcement Division
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
804-786-4805
804-786-4239 (Fax)
E-mail: rvorhis@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2010, I electronically filed the foregoing Amended Answer with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Jeffrey E. Fogel, Esquire, 913 E. Jefferson Street, Charlottesville, VA 22902 (Jeff.Fogel@gmail.com) and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: N/A

s/ Richard C. Vorhis
Richard C. Vorhis, VSB #23170
Senior Assistant Attorney General
Public Safety and Enforcement Division
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
804-786-4805
804-786-4239 (Fax)
E-mail: rvorhis@oag.state.va.us